Callander, 1 Russ. 293. *Cf. Flight* v. *Reed*, 1 H & C. 703. The same is true when the defense is lack of consideration. *Commonwealth Ins. Co.* v. *Whitney*, 1 Metc. (Mass.) 21; *First National Bank* v. *Black*, 108 Ga. 538, 34 S. E 143. As between the immediate parties to the instrument, these are absolute defenses. Other defenses, however, may be waived. Thus giving a renewal note with knowledge of the defense of fraud operates as a waiver of that defense. *Edison General Electric Co.* v. *Blount*, 96 Ga. 272, 23 S. E. 306; *White* v. *Sutherland*, 64 Ill. 181. The authorities also generally recognize that the execution of a renewal note, with knowledge of the defense, will operate as a waiver of the defendant's right to refuse full performance on his side of the contract because of the defective performance rendered by the other party. *American Car Co.* v. *Atlanta City St. Ry. Co.*, 100 Ga. 254, 28 S. E. 40; *Archer* v. *Bamford*, 3 Stark. 175; *cf. Kirkpatrick* v. *Muirhead*, 16 Pa. 117. The right of recoupment is a defense of this nature; and a waiver of it is therefore effective. See WILLISTON, SALES, § 605. This waiver alone, however, should not deprive the defendant of his affirmative cross-action or counterclaim for breach of contract. See WILLISTON, SALES, § 485. But the fact that the defense of recoupment has been waived becomes very material, when, as in the principal case, the Statute of Limitations has run against the affirmative right.

CARRIERS — BILLS OF LADING — LIABILITY ON BILL AFTER DELIVERY OF GOODS.— A short shipment was made under an order bill of lading. The plaintiff bank discounted a draft with the bill attached, although the bill was then three months old and had already been deposited with the bank on four successive occasions as security for drafts subsequently dishonored and taken up by the shipper. Prior to the last discount, the consignee had secured the goods from the carrier without surrendering the bill, and had paid the shipper. The bank sues the carrier. *Held*, that it cannot recover. *Fourth National Bank* v. *Nashville, C. & St. L. Ry. Co.*, 161 S. W. 1144 (Tenn.).

A carrier which issues an order bill of lading and then delivers the goods to one not the holder of the bill, is liable as a converter. *Boatman's Saving Bank* v. *Western & A. R. Co.*, 81 Ga. 221, 7 S. E. 125. Even if delivery is to the holder, failure to take up an order bill makes the carrier liable to a subsequent innocent purchaser. *Ratzer* v. *Burlington C. R. & N. Ry. Co.*, 64 Minn. 245, 66 N. W. 988; *Walters* v. *Western & A. R. Co.*, 56 Fed. 369. The reason for this liability is that the carrier has represented by leaving the bill outstanding that it is still backed by goods and should therefore reimburse an innocent purchaser of it for value. In the principal case in view of the short shipment, the long time the bill was outstanding and the dishonored drafts, the court seems right in saying there could have been no honest reliance on the carrier's representation. Estoppel therefore could not be invoked and the plaintiff could only rely on the consignor's right which, as he had received payment, amounted to nothing at the time of discount.

CARRIERS — DISCRIMINATION AND OVERCHARGE: WHETHER EXTENSION OF CREDIT TO SOME BUT NOT ALL SHIPPERS CONSTITUTES DISCRIMINATION. — The defendant railway company, departing from its regular course of business, did not require a regular monthly settlement from a coal company for the carriage of coal, but accepted notes. The railway renewed the notes and finally accepted in exchange three year debenture bonds. The railway was indicted: (1) for violating Sec. 6 of the Interstate Commerce Act in accepting a different compensation from the published rate; (2) for violating Sec. 2 of the Elkins Act which prohibits discrimination. *Held*, that the railway was properly convicted, at least as to the second count of the indictment. *Hocking Valley* v. *United States*, 210 Fed. 735 (C. C. A., 6th Circ.).

The case seems clearly right on the facts, since here the shipper was getting a

substantial advantage over other shippers. (See 26 HARV. L. REV. 82 for discussion of the same case in the lower court.) The case goes further, however, and contains language casting doubt upon the hitherto well-established doctrine that the mere fact that credit is extended to some shippers and refused others is not sufficient to constitute a discrimination. *Little Rock & Memphis R. Co.* v. *St. Louis & S. W. R. Co.*, 63 Fed. 775; *Gamble-Robinson Com. Co.* v. *Chicago & N. W. R. Co.*, 168 Fed. 161. See cases collected in notes, 21 L. R. A. N. S. 982, and 16 Anno. Cas. 613, 621. These cases were distinguished by the principal case on the ground that they were decided under the Interstate Commerce Act forbidding "unjust and unreasonable" discrimination, whereas this case arose under the Elkins Act from which the qualifying words were omitted. In order to support this case it would seem unnecessary to distinguish those cases, for here the advantage given the particular shipper was clearly unjust and unreasonable, since the carrier is practically furnishing capital to the favored shipper. Moreover it is submitted that even if the earlier cases had arisen under the Elkins Act, the result would have been the same, since the legal content of the term "discrimination" must include the elements of injustice or unreasonableness. On the one hand, it would create unnecessary inconvenience to shippers always to require payment in advance. On the other hand, it would be unfair and probably unconstitutional to require a railroad to give credit to all. *Attorney General* v. *Old Colony R.*, 160 Mass. 62, 35 N. E. 252. This latter objection, however, might perhaps be answered by requiring credit to be extended to all shippers furnishing a satisfactory bond. But this too affords ground for some discrimination. Therefore it is submitted that in the matter of extending credit, considerable freedom should be permitted the railroad and that only where, as in the principal case, there is a clear abuse, should a discrimination be declared.

CARRIERS — LIMITATION OF LIABILITY — EFFECT OF FILING THE TERMS OF LIMITATION WITH THE INTERSTATE COMMERCE COMMISSION.— The plaintiff at the start of an interstate journey checked her baggage without declaring its value. The defendant railroad had filed with the Interstate Commerce Commission a statement that its liability on baggage would be limited to one hundred dollars unless a greater value was declared by the shipper and excess charges paid. The trial judge found that the plaintiff had no notice of this regulation, and no inquiry was made by the railroad as to the value of the baggage. *Held*, that the plaintiff could recover only the limited amount. *Boston & Maine Railroad* v. *Hooker*, 34 Sup. Ct. 526.

For a discussion of the principles involved in this case see Page 737 of this issue of the REVIEW.

CARRIERS — PASSENGERS: EJECTION OF PASSENGERS — FAILURE TO PRODUCE TICKET CAUSED BY FAULT OF CARRIER.— A passenger on the defendant railroad, gave up his entire ticket to a uniformed employee on the first half of the journey, and was ejected by the conductor in charge of the second half for his consequent failure to produce the coupon when demanded. The passenger now sues for damages for the ejection. *Held*, that he can recover if his ticket was surrendered to an authorized agent, but cannot if the agent lacked authority to receive tickets. *Galveston, H. & S. A. Ry. Co.* v. *Short*, 163 S. W. 601 (Tex. Civ. App.).

If a passenger has lost his ticket he can be expelled. *Downs* v. *New York & N. H. R. Co.*, 36 Conn. 287. But if the coupon for the last half of the journey has been collected prematurely, there is a conflict of authority as to whether the passenger can be ejected by the conductor in charge during the final stage. Some states hold that he cannot be ejected. *Philadelphia, W. & B. R. Co.* v. *Rice*, 64 Md. 63, 21 Atl. 97; *Kansas City, M. & B. R. Co.* v. *Riley*, 68 Miss.